

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

ORIGINAL

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7645

MICHAEL C. SLOAN
DIRECT DIAL (202) 295-8458
MCSLOAN@SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

February 22, 2000

DOCKET FILE COPY ORIGINAL

VIA REGULAR MAIL

Honorable Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, N.W., SW
Washington, DC 20554

RECEIVED

FEB 22 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Application by SBC Communications Inc., etc. for Provision of In-Region,
InterLATA Services in Texas Under Section 271 of the Communications Act
(CC Docket 00-4)

Dear Secretary Salas:

Please find enclosed the Reply Comments of Allegiance Telecom, Inc. in the above captioned proceeding. A computer disk containing an electronic version of the Reply Comments is also enclosed.

Sincerely,


Michael C. Sloan

No. of Copies rec'd 876
List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
FEB 22 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company, and)	CC Docket No. 00-4
Southwestern Bell Communications Services,)	
Inc. d/b/a/ Southwestern Bell Long Distance)	
for Provision of In-Region, InterLATA)	
Services in Texas)	

**REPLY COMMENTS OF ALLEGIANCE TELECOM, INC. IN OPPOSITION TO
SOUTHWESTERN BELL'S SECTION 271 APPLICATION FOR TEXAS**

Allegiance Telecom, Inc. ("Allegiance"), by its undersigned counsel, hereby submits these Reply Comments in opposition to the Application of Southwestern Bell Telephone Company ("SWBT") for authority to provide in-region long distance services in Texas pursuant to Section 271 of the Communications Act of 1934, as amended (the "Act").

SUMMARY AND INTRODUCTION

The record clearly demonstrates that SWBT's Application for Section 271 approval must be rejected. The vast majority of commenters in this proceeding, as well as the Department of Justice ("DOJ"), share this view. The only significant comments in favor of SWBT's Application are those of the Texas Public Utility Commission ("PUC"), which endorsed the Application despite its manifold deficiencies.

This brief Reply reviews the principal reasons why SWBT's Application does not pass muster under Section 271. Though SWBT promises that it will provide compliant service in the future, its application is bereft of the performance data necessary to demonstrate current compliance, as the Act requires. This Reply further explains why the PUC's endorsement cannot be accorded significant

weight. Not only did the PUC fail to acknowledge the defects in the record plainly before it, but the PUC's reliance on SWBT's model interconnection agreement – the T2A – is misplaced. Indeed, in a currently on-going Texas arbitration proceeding SWBT is seeking to revisit certain terms and conditions of the T2A. Finally, it is manifestly clear that granting SWBT's Application is not in the public interest.

ARGUMENT

Allegiance demonstrated in its Opening Comments that SWBT's Application could not be approved because: (1) SWBT failed to demonstrate that it "is providing" nondiscriminatory service to competitors offering xDSL services; and (2) SWBT failed to present evidence that its provisioning of "hot cuts" of unbundled loops gives competitive local exchange carriers ("CLECs") a meaningful opportunity to compete.¹

Allegiance's comments were based largely on information contained in SWBT's Application. Thus, Allegiance pointed out that SWBT's so-called separate xDSL affiliate – which the Commission stated in the *Bell Atlantic New York Order*² would be a prerequisite for the approval of future Section 271 Applications – was not yet up and running, and was not expected to be so until March 2000. Allegiance similarly noted the Texas PUC's recent finding – in the context of

¹ Allegiance also highlighted the deficiencies with the Telcordia study, and brought to the Commission's attention an episode in which SWBT refused to interconnect with an Allegiance switch without a good-faith basis for refusing to do so.

² *Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, Memorandum Opinion and Order, FCC 99-404 (Dec. 22, 1999), *appeal pending sub nom., AT&T v. FCC*, No. 99-1538 (D.C. Cir.).

confirming an arbitration award – that SWBT’s practices and procedures for provisioning xDSL are blatantly discriminatory and operationally deficient. Allegiance also pointed out the absence of any meaningful hot cut data. Not only was SWBT collecting the wrong information, but its sloppy procedures for doing so rendered the data it did collect all but valueless. The other comments submitted in this proceeding echoed these themes, and identified other defects that, collectively, preclude the Commission from granting SWBT’s Application.

The Department of Justice likewise advocates rejecting SWBT’s Application. The Department cited three principal reasons: (1) that “SBC has not demonstrated that it is providing non-discriminatory treatment to competitors offering xDSL services;” (2) “that SBC’s performance ... in providing hot cuts of unbundled loops ... falls short of the ‘minimally acceptable’ level” identified in the *Bell Atlantic New York Order*; and (3) that the “record leaves considerable doubt about whether SBC can provide interconnection trunks in a timely manner, and whether carriers will be able to compete effectively using the UNE-platform.” Evaluation of the United States Department of Justice (“DOJ Evaluation”) at 2-3.

Several aspects of the DOJ Evaluation are especially noteworthy. First, in keeping with its self-imposed methodology of “focus[ing] on SBC’s actual commercial performance,” DOJ did not address the implications of the Texas PUC’s recent affirmation of the Covad/Rhythms Arbitration.³

³ As Allegiance noted in its Opening Comments (at 7-8), this arbitration exposed numerous illegal SWBT practices, including a discriminatory pricing regime for xDSL loops; discriminatory provisioning procedures; and discriminatory OSSs that block CLECs from receiving necessary information. *See also* PUC Evaluation at 63-64 (acknowledging the numerous “process changes” that SWBT will have to make in order to comply with the arbitration award).

Similarly, DOJ examined SWBT's proffered hot cut data – as flawed as it concededly is – and concluded that even on its own terms, SWBT failed to demonstrate compliant performance.

The only significant commenter that advocated approving the application was the Texas PUC. A plain reading of the PUC's Evaluation, however, particularly with respect to the hot cut and xDSL provisioning issues, reveals that the PUC's endorsement is premature.

Deficient Hot Cuts. The PUC's evaluation acknowledged the importance of assuring that CLEC customers "not lose dial tone during a loop conversion process," and further noted that "CLECs strenuously argued" this point during the state's Section 271 proceeding. PUC Evaluation at 57. Nonetheless, as the PUC recognized, performance measures to capture dial tone outages, as well as procedures to measure the duration of the entire provisioning interval for coordinated hot cuts, were not in place when the PUC approved the T2A on October 13, 1999. *Id.* Indeed, these measures were not established until December 1999 – just weeks before SWBT submitted its Section 271 Application to the Commission.

Moreover, as DOJ demonstrated, the PUC's conclusion that SWBT's "commercial performance" was adequate was based, at least in part, on erroneous data. *See* DOJ Evaluation at 30-32 and n.83. The "newly" submitted data – much of which was not available to the PUC, and which even SWBT concedes is hardly a random sample – shows that only 86 percent of hot cuts were performed within one hour, significantly below the 90 percent benchmark which the Commission found "minimally acceptable" in the *Bell Atlantic New York Order*. *See id.* DOJ identified deficient performance in other crucial hot cut measures, as well. For example, a higher percentage of SWBT's hot cuts generated trouble reports within ten days than did Bell Atlantic's in New York. *Id.* at 33-34.

Similarly, SWBT customers experience outage rates nearly twice as high as Bell Atlantic's New York customers do. *Id.* at 32-33

Allegiance maintains that these deficiencies require the rejection of SWBT's Application because SWBT has not shown that it is "providing" service that gives CLECs a "meaningful opportunity to compete," as required by Section 271. The PUC's promise to closely monitor SWBT's future performance is a legally insufficient substitute for demonstrating actual compliance at the time of the Application.

Deficient xDSL Provisioning. Despite the unrefuted evidence to the contrary, the Texas PUC found that SWBT's provisioning of xDSL-capable loops satisfied Section 271 checklist requirements. Much of the evidence most damaging to SWBT's application is presented in the PUC's Evaluation. The PUC obviously did not recognize its significance. For example, the PUC noted that SWBT has not yet established permanent interconnection terms and conditions for xDSL. PUC Evaluation at 61. Rather, SWBT established "interim agreements" with several CLECs "in mid-1999," *id.*, that were subsequently held facially discriminatory in an arbitration award that the PUC itself confirmed, *id.* at 63-64. SWBT cannot, therefore, demonstrate the existence of "a concrete and specific legal obligation" to furnish service pursuant to a valid interconnection agreement.⁴ Indeed, SWBT's application could be rejected for this deficiency alone.

As for Attachment 25 of the Texas 271 Agreement, upon which the PUC relied for its endorsement of SWBT's application, that document will have to be revised to reflect the findings in

⁴ *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, Memorandum and Order, 12 FCC Rcd. 20543, ¶ 110 (1997).

the Covad/Rhythms arbitration, and thus cannot be cited as a basis for approving the application.⁵ Finally, the PUC expressly noted that Advanced Systems, Inc. (“ASI”), SWBT’s “separate xDSL affiliate” will not begin processing local service requests for UNEs until February 28, 2000, at the earliest. *Id.* at 60. SWBT has thus failed to offer “proof of a fully operational separate advanced services affiliate,” as the Commission made clear in the *Bell Atlantic New York Order* (at ¶ 330) would be required of future Section 271 applicants.⁶

As with its analysis of hot cuts, Allegiance views these structural deficiencies as sufficient to require the rejection of SWBT’s application. *See* Allegiance Comments at 7-8. In its Evaluation, the DOJ agreed, and demonstrated that SWBT’s actual implementation of these discriminatory terms and conditions was deficient, as well. *See* DOJ Evaluation at 17-23. The DOJ summed up its position as follows: “an applicant that has failed to provide nondiscriminatory treatment prior to the establishment of a separate affiliate should be required to demonstrate that the implementation of the separate affiliate structure has in fact resulted in nondiscriminatory performance.” *Id.* at 26. In SWBT’s case, it not only has a deficient track record, but no operational separate affiliate. It has, therefore, not made even a *prima facie* showing to justify the approval of its Section 271 Application.

⁵ *See* PUC Evaluation at 62 (“[c]ertain aspects of Attachment 25 regarding the rates, terms and conditions of xDSL-capable loops are subject to adjustment, dependent on the outcome of the recently concluded xDSL arbitration proceeding”).

⁶ In addition to these operational defects, AT&T has raised several troubling questions about ASI’s structural independence from SWBT. *See* AT&T Comments at 25-27. At a minimum, SWBT will have to submit additional information before ASI’s actual independence from SWBT can be conclusively determined.

The T2A Provides No Assurance that SWBT Will Live Up to its Promises. The PUC's recommendation of approval of SWBT's Application is based, to a considerable degree, on SWBT's commitment to provide service in accordance with the terms and conditions of the T2A. Recent developments in a PUC arbitration initiated to resolve reciprocal compensation issues, however, have cast considerable doubt on the reasonableness of this reliance. During this proceeding, SWBT has attempted to reopen issues that Allegiance believed were settled by the provisions of the T2A.

Some background is required to fully appreciate SWBT's conduct. In October 1999, Allegiance opted into the T2A. The option Allegiance selected deferred the issue of whether reciprocal compensation would be paid for Internet traffic after January 22, 2000 to a subsequent arbitration.⁷ The other terms and conditions of the T2A remain in effect at least until October 2000. On February 3, 2000, Allegiance petitioned the PUC to arbitrate the reciprocal compensation issue, as the parties' agreement expressly contemplated it would do.⁸ SWBT's Response to Allegiance's arbitration petition, however, made clear that SWBT now views the reciprocal compensation arbitration as an opportunity to revisit the other terms and conditions of the T2A. Thus, SWBT has asked the arbitrators to consider the following additional issues: (1) whether CLECs should be required to

⁷ Specifically, under Option 1 of Attachment 12 of the T2A, the reciprocal compensation terms and conditions terminated on January 22, 2000. For the period beginning after January 22, 2000, the T2A states as follows:

the provisions of this Attachment shall continue to apply to all traffic types, except that the compensation arrangement shall be Bill and Keep for all wireline Local Traffic including internet traffic, subject to true-up, during periods of renewal negotiations and/or arbitration.

⁸ See Petition of Allegiance Telecom of Texas, Inc. for Arbitration Under the Telecommunications Act of 1996 (Feb. 3, 2000) (Attachment 1).

provide a point of interconnection in each SWBT exchange;⁹ (2) whether CLECs should be required to identify the “jurisdictional nature” of local traffic, *id.* at 14; and (3) whether CLECs are entitled to the tandem and transport reciprocal compensation rate elements, *id.* at 14-15. Despite the fact that these issues are addressed and resolved in the T2A, SWBT has sought to use the reciprocal compensation proceeding as a vehicle to reopen them.

SWBT’s effort to include these issues as part of the reciprocal compensation arbitration casts doubt on its commitment to comply with the provisions of the T2A throughout the term of that Agreement. It also calls into question the reasonableness of the PUC’s reliance on the T2A as evidence that SWBT has complied with the Competitive Checklist and “irreversibly opened” the Texas market to competition.

Granting SWBT’s Application Is Not In The Public Interest. Despite its obvious deficiencies, the Texas PUC argued that granting SWBT’s Application was in the public interest. The PUC’s position was based primarily on its mistaken view that SWBT demonstrated compliance with the Competitive Checklist. The PUC also relied on SWBT’s claims about the extent of competitors’ entry into the local market, as well as the “mechanisms” that are purportedly in place to assure that Texas’ markets remain open.

As Allegiance, the DOJ, and other commenters in this proceeding have demonstrated, however, each of the factual predicates underlying the PUC’s position is simply wrong. As explained above, SWBT has not demonstrated compliance with its Checklist obligations. Moreover, SWBT

⁹ Southwestern Bell Telephone Company’s Response to Petition of Allegiance Telecom of Texas, Inc. (Feb. 9, 2000) (Attachment 2) at 11-14.

has dramatically overstated the threat it faces from competition, as Allegiance argued in its Opening Comments (at 12-13). Indeed, DOJ maintains that SWBT has probably overstated the number of competitors' lines in the state by approximately 175 percent. *See* DOJ Evaluation at 9 n.15 (citing declaration of Allegiance's Elizabeth Howland as evidence that SWBT has exaggerated the state of competition).

Finally, SWBT's markets are far from "irreversibly open," as SWBT's conduct in the reciprocal compensation arbitration illustrates. Indeed, SWBT's eagerness to walk away from the T2A at this first opportunity highlights the minimal weight that should be accorded the T2A as a tool for disciplining SWBT, and further serves as a reminder of SWBT's cynical approach to combating competition. Whether it be manipulating the political process, taking outrageous tactical positions in litigation, failing to comply with discovery obligations, or out-and-out coercion, the "Bully Bell"¹⁰ has never hesitated to do whatever is necessary to keep competitors at bay. *See* Allegiance Opening Comments at 12-18. Thus, SWBT should not be given the benefit of any doubts. Rather, it should be required to demonstrate actual compliance with all the items of the Competitive Checklist, in accordance with the plain terms of Section 271. Because it has not, its Application must be denied.

¹⁰ *See* Christopher Palmeri, *Bully Bell*, FORBES (April 22, 1996).

CONCLUSION

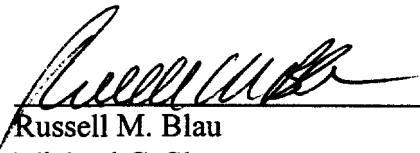
For the foregoing reasons, the Commission should deny the SWBT Application, or if approval is granted, impose the conditions set forth in Allegiance's Opening Comments.

Respectfully submitted,

Robert W. McCausland
Vice President, Regulatory and
Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway
Suite 3026
Dallas, TX 75207-3118

Mary C. Albert
Regulatory Counsel
Allegiance Telecom, Inc.
1100 Fifteenth Street, N.W.
Suite 200
Washington, D.C. 20005

Dated: February 22, 2000



Russell M. Blau
Michael C. Sloan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
(202) 424-7500 (tel)
(202) 424-7645 (fax)

Counsel for Allegiance Telecom, Inc.

Attachment 1

DOCKET NO. 21982

**PROCEEDING TO EXAMINE § PUBLIC UTILITY COMMISSION
RECIPROCAL COMPENSATION §
PURSUANT TO SECTION 252 OF THE § OF TEXAS
FEDERAL TELECOMMUNICATIONS §
ACT OF 1996 §**

**PETITION OF ALLEGIANCE TELECOM OF
TEXAS, INC. FOR ARBITRATION UNDER THE
TELECOMMUNICATIONS ACT OF 1996**

I.

INTRODUCTION

Allegiance Telecom of Texas, Inc. (Allegiance) requests that the Public Utility Commission of Texas (Commission) arbitrate the unresolved reciprocal compensation issue between Allegiance and Southwestern Bell Telephone Company (SWBT) pursuant to sections 251 and 252 of the Telecommunications Act of 1996.¹

In support of its Petition, Allegiance provides a description of the unresolved issue and a general overview of the parties' position on that issue. Under the Commission's direction, however, Allegiance is not filing a copy of its interconnection agreement with this Petition. In Order No. 3 issued in this docket, the Commission waived the requirement under Procedural Rule 22.305 to file the most current version of the interconnection agreement.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

II.

BACKGROUND

A. The Parties

1. Allegiance – Allegiance is a facilities-based telecommunications carrier certificated by the Commission to provide telecommunications services in Texas.

Allegiance's address is:

Allegiance Telecom of Texas, Inc.
1950 Stemmons Frwy., Suite 3026
Dallas, Texas 75207
Telephone: (214) 261-7100

Communications related to the arbitration should be made to:

Susan B. Schultz
Smith, Majcher & Mudge, L.L.P.
816 Congress Avenue, Suite 1270
Austin, Texas 78701
Telephone: (512) 322-9044
Facsimile: (512) 322-9020
sschultz@reglaw.com

Mary C. Albert
Allegiance Telecom, Inc.
1100 15th St., N.W., Suite 200
Washington, D.C. 20005
Telephone: (202) 263-4900
Facsimile: (202) 263-4901

Ms. Schultz is counsel of record for purposes of service.

2. SWBT - SWBT is a Missouri corporation authorized to operate as a telecommunications company providing local exchange and other services in the states of Texas, Oklahoma, Missouri, Kansas and Arkansas. SWBT is an "incumbent local exchange carrier" (ILEC) as that term is defined in sections 251 and 252 of the FTA.

SWBT's representatives for this proceeding are as follows:

Mr. J. David Tate
Mr. Thomas J. Horn
Southwestern Bell Telephone Company
1616 Guadalupe, Room 600
Austin, Texas 78701
Telephone: (512) 870-5714
Facsimile: (512) 870-3420

B. Status Under the T2A

Following negotiations for a successor interconnection agreement with SWBT, Allegiance adopted the Texas 271 Agreement (T2A), selecting Option 1 for reciprocal compensation terms and conditions under Attachment 12 of the T2A. In Docket No. 21573, *Interconnection Agreement between Allegiance Telecom of Texas, Inc. and Southwestern Bell Telephone*, the Commission recognized that the new interconnection agreement between Allegiance and SWBT became effective on October 28, 1999.

Under Option 1 of Attachment 12 of the T2A, the reciprocal compensation terms and conditions terminated on January 22, 2000. For the period beginning after January 22, 2000, the T2A states as follows:

the provisions of this Attachment shall continue to apply to all traffic types, except that the compensation arrangement shall be Bill and Keep for all wireline Local Traffic including internet traffic, subject to true-up, during periods of renewal negotiations and/or arbitration.

Allegiance is requesting the Commission to determine that Internet Traffic, like Local Traffic and EAS traffic, should continue to be compensated under the reciprocal compensation terms and conditions previously approved by the Commission.

C. Timeline

Allegiance submits to the Commission's time frames as set forth in this docket for resolving the reciprocal compensation issue and incorporating the results into the interconnection agreement, as appropriate.

III.

DISCUSSION OF UNRESOLVED ISSUES

At this time, the only issue that Allegiance is requesting the Commission to determine is the appropriate compensation arrangement for Local and ISP-bound traffic. Option 1 under the T2A was the result of a compromise between the Commission and SWBT. SWBT's position on compensation for Local Traffic and ISP-bound traffic is reflected in Option 2 of the T2A. Option 1 was placed in the T2A to give parties that disagreed with SWBT's position a temporary alternative. That alternative has now expired.

Allegiance asserts that Local Traffic should continue to be compensated in accordance with SWBT's TELRIC-based rates on an equal and reciprocal basis. Furthermore, there is no basis on which to segregate Internet traffic from other traffic types already specified in its interconnection agreement. Consequently, Allegiance and SWBT should continue to compensate each other equally and reciprocally for Internet traffic based on SWBT's TELRIC-based rates for Local and EAS traffic. The issue is a recurring one for the Commission.

1. Commission Rulings

The issue of whether reciprocal compensation provisions apply to traffic terminating to ISPs is by now a familiar one. The Commission was faced with this very issue in a complaint filed back in 1997. *Complaint and Request for Expedited Ruling of Time Warner Communications*, Docket No. 18082 (Oct. 7, 1997). In that complaint, Time Warner alleged that SWBT was in violation of its interconnection agreement for refusing to compensate Time Warner for its termination of SWBT customers' calls to

ISPs, which were Time Warner's customers. In its final order, the Commission concluded "that calls placed to ISPs through the public switched network should be considered 'local traffic' for purposes of the reciprocal compensation provision" in the interconnection agreement between SWBT and Time Warner. *Id.* Final Order (Feb. 27, 1998). The Commission has affirmed that decision in each subsequent Commission proceeding in which SWBT has raised the ISP compensation issue.²

2. *Effective Law*

The Commission's ruling that ISP traffic is entitled to reciprocal compensation is the state law in effect at this time and prevails, absent any contrary federal law. There is no contrary federal law.

While stating that "a substantial portion of Internet traffic involves accessing interstate or foreign websites," the Federal Communications Commission (FCC) has refused to find that conclusion dispositive on the issue of inter-carrier compensation. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Declaratory Ruling, FCC 99-388 (rel. Feb. 26, 1999). Indeed, the FCC confirmed the state's authority to establish that compensation.

Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.

Id. at ¶ 25. Absent an FCC rule that addresses inter-carrier compensation for ISP traffic

² *Petition of Waller Creek Communications, Inc. for Arbitration with Southwestern Bell Telephone Company*, Docket No. 17922; *Complaint of Taylor Communications Group, Inc. Against Southwestern Bell Telephone Company*, Docket No. 18975, Order No. 3 (May 4, 1998); and *Complaint and Request for Expedited Ruling of Golden Harbor of Texas, Inc.*, Docket No. 19160, Arbitrator's Decision (June 30, 1998).

and establishes a different compensation scheme, there is no basis to exclude ISP traffic from the Commission's previously-approved reciprocal compensation arrangements.

The Commission should apply the current, effective law and conclude that ISP-bound traffic should continue to be compensated equally and reciprocally based on SWBT's TELRIC-based rates for Local and EAS traffic. Because it seeks a reciprocal rate with SWBT, Allegiance asserts that its own costs involved in terminating traffic, including Internet traffic, are irrelevant to this proceeding and has no intention of sponsoring a cost study to prove up its costs.

IV.

CONCLUSION AND PRAYER

In this petition, Allegiance seeks the Commission's review and determination of an issue of crucial importance to the industry. The T2A only provided for a temporary solution concerning reciprocal compensation terms and conditions; the Commission must now affirm the appropriate long-term solution.

For all the foregoing reasons, Allegiance respectfully requests the following:

1. that the Commission appoint an Arbitrator to determine the unresolved issue between Allegiance and SWBT;
2. that the Arbitrator consolidate Allegiance's Petition for Arbitration with other similar petitions, if appropriate;
3. that the Arbitrator(s) issue an Arbitration Award resolving this issue in conformance with Allegiance's position; and
4. that the Commission grant Allegiance any other relief to which it may be entitled.

Respectfully submitted,

SMITH, MAJCHER & MUDGE, L.L.P
816 Congress Ave., Suite 1270
Austin, Texas 78701
Tel: (512) 322-9044
Fax: (512) 322-9020

By: _____
Susan B. Schultz
State Bar No. 02190500

ATTORNEYS FOR ALLEGIANCE
TELECOM OF TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served to parties of record by facsimile, electronic mail, or hand-delivery on February 3, 2000.

Susan B. Schultz

Attachment 2

DOCKET NO. 21982

**PROCEEDING TO EXAMINE
RECIPROCAL COMPENSATION
PURSUANT TO SECTION 252 OF THE
FEDERAL TELECOMMUNICATIONS
ACT OF 1996**

§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO PETITION OF ALLEGIANCE TELECOM OF TEXAS INC.**

Southwestern Bell Telephone Company ("SWBT"), pursuant to Section 252(b)(3) of the Federal Telecommunications Act of 1996 ("FTA")¹ and PUC Procedural Rule § 22.305, files this Response to the Petition of Allegiance Telecom of Texas, Inc. ("Allegiance").

I.

INTRODUCTION

The primary issue in this arbitration involves what inter-carrier compensation payments — if any — should be made for the handling of Internet-bound traffic. The FCC has ruled that traffic bound for the Internet is not local, and therefore such traffic is not subject to the reciprocal compensation obligation of section 251(b)(5) of the FTA.² In SWBT's view, that determination should be the end of the matter. SWBT understands that the Public Utility Commission of Texas ("Commission") has not taken this view. Instead, the Commission has interpreted the FCC's Declaratory Ruling as holding that state commissions have authority, in arbitrating interconnection agreements under section 252 of the FTA, to adopt an appropriate inter-carrier compensation regime for

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 251 et seq.

² Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 3589 (1999) ("Declaratory Ruling").

Internet-bound traffic, so long as such a regime is consistent with federal law.³ Should the Commission determine—contrary to SWBT's jurisdictional position and any SWBT agreement—that it has the authority to order some type of inter-carrier compensation on Internet-bound traffic, then the Commission should necessarily undertake responsibility for devising an efficient inter-carrier compensation structure to take the place of the reciprocal compensation structure that the FCC has now ruled does not apply. Accordingly, without waiving its jurisdictional arguments, SWBT will work with the Commission to develop a new and economically rational approach to this issue.

No prior decision of this Commission addresses the issue as framed by the FCC. The Commission should consider the economic and policy implications of various approaches. Principal among the relevant considerations is the need to ensure that any inter-carrier compensation arrangement respects principles of cost causation, such that users will face economically efficient incentives in using the telephone network. An efficient regime will promote genuine competition for residential and business customers because customers will no longer be liable to the provider of full local service, generally producing reciprocal compensation obligations far in excess of the revenues such customers generate. Further, the end of the current reciprocal compensation anomaly will also mean that new entrants will no longer be tempted to distort their

³ Comments of the Public Utility Commission of Texas, *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, at 7, n.4 (FCC filed Apr. 12, 1999) (hereinafter "Commission Comments"). As several incumbent LECs are now arguing in federal court, imposing reciprocal compensation for Internet-bound traffic, when the federal obligation has been explicitly limited to local traffic, conflicts with federal law. Moreover, because this traffic is, at a minimum, predominantly interstate, this Commission lacks jurisdiction to impose inter-carrier compensation obligations for such traffic. See *Bell Atlantic Telephone Cos. v. FCC*, No. 99-1094 (D.C. Cir. filed March 8, 1999). Oral argument is scheduled in that case for November 22, 1999.

business plans to exploit this economically wasteful opportunity for regulatory arbitrage, at the expense of broad-based competition in the real local market.

Because Internet Service Providers ("ISPs") are in reality using interstate access service, federal and state regulatory precedent and sound economics dictates that the appropriate way to treat this traffic is to adopt a "meet-point-billing" arrangement, under which the two carriers jointly providing such access would share the access revenues received from the ISP. As a practical matter, however, because federal law exempts ISPs from the payment of per-minute access charges, meet-point-billing will amount to a *de facto* "bill-and-keep" arrangement (in which no inter-carrier compensation would change hands) for Internet-bound traffic, at least until the FCC removes the Enhanced Service Provider ("ESP") exemption from access charges. With the implementation of a meet-point-billing arrangement, a billing mechanism will be in place should the FCC remove or modify the ESP exemption in the future. SWBT firmly endorses a meet-point-billing arrangement but, without waiving this position, submits that the Commission at a minimum should adopt an inter-carrier compensation regime that reflects the far lower costs local carriers serving ISPs incur.

II. UNRESOLVED ISSUE

A. Inter-Carrier Compensation For Internet-Bound Traffic

The Commission should declare that Internet-bound Traffic Is Not Subject to Reciprocal Compensation.

In prior decisions, the Commission determined, as a matter of contract interpretation, that "the definition of 'local traffic' in the applicable interconnection

agreements includes ISP traffic."⁴ Here, there is no contract. The current arbitration petition presents an entirely different issue. That issue is: Should SWBT be ordered by the Commission to enter into a contract to pay reciprocal compensation for Internet traffic when the FCC has definitively ruled that Internet-bound traffic is not local and, therefore, not subject to the reciprocal compensation obligation of section 251(b)(5) of the Act? As this Commission has stated, the "issue of inter-carrier compensation for ISP-bound traffic on a prospective basis" is distinct from the "issue of inter-carrier compensation for ISP-bound traffic under pre-existing interconnection agreements."⁵

1. *Federal Regulatory Background*

In its *Local Interconnection Order*,⁶ the FCC determined that "section 251(b)(5) reciprocal compensation obligations apply only to traffic that originates and terminates within a local area," and "do not apply to the transport or termination of interstate or intrastate interexchange traffic." 11 FCC Rcd at 16013. ¶ 1034. That conclusion was codified in rules limiting the reciprocal compensation obligation to "local telecommunications traffic," defined as traffic that "originates and terminates within a local service area." 47 C.F.R. §§ 51.701(b)(1), 51.703(a). See also *Declaratory Ruling*, 14 FCC Rcd at 3705-06 ¶ 26 ("reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic").

⁴ Order, *Complaint and Request for Expedited Ruling of Time Warner Communications*, P.U.C. Docket No. 18082, at 5 (Feb. 27, 1998).

⁵ Commission Comments at 4.

⁶ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, *Iowa Utils. Bd v. FCC*, 120 F3d 763 (8th Cir. 1997), rev'd in part, *aff'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

In the *Declaratory Ruling*, the FCC determined that, because calls to the Internet "do not terminate at the ISP's local server ... but continue to the ultimate destination or destinations, specifically at a[n] Internet web site that is often located in another state," such calls are not local within the meaning of the FCC's regulations.⁷ For this reason, the FCC expressly confirmed that local exchange carriers are not required, pursuant to section 251(b)(5), to pay reciprocal compensation for Internet-bound traffic.⁸

This ruling should be the end of the matter.⁹ However, the Commission has indicated that it believes the FCC has ruled that, until the federal agency adopts a new federal rule to govern this issue, state commissions have the authority, "under section 251 and 252," to determine an appropriate inter-carrier compensation mechanism for Internet-bound traffic, so long as that mechanism is consistent with federal law.¹⁰ Accordingly, without waiving its jurisdictional arguments, SWBT will work with the Commission to develop a new and economically rational approach to this issue.

2. *An Efficient Inter-Carrier Compensation Regime for Internet-Bound Traffic*

This Commission has recognized that any inter-carrier compensation regime for Internet-bound traffic "should discourage regulatory arbitrage and resulting market distortions."¹¹ SWBT agrees. And as SWBT will show in the course of this proceeding, the best way to achieve this result is to adopt meet-point-billing or bill-and-keep

⁷ *Declaratory Ruling*, 14 FCC Rcd at 3697, ¶ 12.

⁸ *Id.* at n. 87.

⁹ See Note 4. Because this traffic is, at a minimum, predominantly interstate, this Commission lacks jurisdiction to impose inter-carrier compensation obligations for such traffic. See *Bell Atlantic Telephone Cos. v. FCC*, No. 99-1094 (D.C. Cir. filed March 8, 1999).

¹⁰ Commission Comments at 2, n. 4.

¹¹ Commission Comments at 3.

arrangements for Internet-bound traffic. Such an arrangement will contribute to the development of healthy local competition in Texas, because it will provide all telecommunications providers the proper economic incentives to compete for and serve end-user customers and ISP customers alike.

ISPs are access service customers. ISPs, like long distance carriers, sell a service to their subscribers that depends upon ISPs having access to the "last mile" of the local telephone network to complete interstate—indeed often global—communications links. As a matter of economic efficiency and regulatory rationality, therefore, ISPs should pay local service providers the costs of access and pass those costs on to their ultimate subscribers, just as IXCs do. However, the FCC currently has a policy that exempts enhanced service providers, including ISPs, from the payment of interstate access charges that would normally compensate local providers for the costs that interstate access users impose on the local network.

In the absence of the FCC's ESP exemption, if two carriers (e.g. SWBT and Allegiance) jointly provided interstate access to an ISP, the ISP would pay the carrier serving the ISP (Allegiance) per-minute access charges; the ISP's carrier (Allegiance) would in turn be required to pass on a portion of those access charges to the carrier serving the customer who originated the call (SWBT).¹² Because the FCC has exempted ISPs from paying interstate access charges, however, the carrier serving the

¹² See, e.g., Memorandum Opinion and Order, *Access Billing Requirements for Joint Service Provision*, 4 FCC Rcd 7183, 7185-86, ¶¶ 22-24 (1989).

ISP receives no per-minute access charges (although the ISP still pays for the services it purchases based on the ISP's carrier's intrastate tariff).¹³

If inter-carrier compensation is warranted for Internet-bound traffic under existing federal rules at all, consistent with this access model, the carrier that serves the ISP should compensate the carrier that serves the originating customer, not the other way around. The best means for accomplishing this result is the same process used in the access arena, a meet-point-billing arrangement. As a practical matter, however, because the carrier serving the ISP receives no per-minute access charges to share, meet-point-billing in the current environment effectively constitutes a *de facto* bill-and-keep arrangement, whereby each carrier will recover its costs from its end-user customer.¹⁴ It is entirely inappropriate—both from the point of view of regulatory precedent and economic principle—to apply the Interstate ESP exemption but not apply the meet-point-billing arrangements that historically have applied to such interstate traffic. The Commission should therefore require the parties to adopt a bill-and-keep arrangement to govern that traffic as long as the ESP exemption remains intact.

3. *A Second-Best Inter-Carrier Compensation Arrangement*

In an efficient inter-carrier compensation arrangement, a carrier originating Internet-bound traffic should pay no compensation to a co-carrier that jointly provides

¹³ If a given carrier serving an ISP incurs usage-sensitive costs in providing access that exceed the charges it imposes on its ISP customer under its intrastate tariffs, that is solely a function of the FCC's exemption. That carrier is in a position no different from that of an incumbent LEC or any other carrier providing access to ISPs.

¹⁴ Such an arrangement would not be inconsistent with the FCC's determination that bill-and-keep arrangements for section 251(b)(5) reciprocal compensation may only be imposed "if traffic is roughly balanced in the two directions and neither carrier has rebutted the presumption of symmetrical rates." *Local Interconnection Order*, 11 FCC Rcd at 16055, ¶ 1112. Any inter-carrier compensation arrangements here would not be imposed pursuant to section 251(b)(5), which the FCC has held does not apply to this traffic.

access service to the ISP. However, without waiving that position, SWBT alternatively requests that, at a minimum, the Commission establish a compensation structure for Internet-bound traffic that takes into account the unique nature of Internet-bound traffic.

The Commission has recognized that the reciprocal compensation regime applicable to local traffic should not be applied to Internet-bound traffic. As former Commissioner Curran stated:

And these kinds of [Internet] call[s] are going to be longer in duration probably, they're also going to be more incoming than outgoing. And if those types of things are creatures that cause a different type of rate to be developed or applied, then I think and I would encourage, if that's the case, Bell to petition us to consider something else.

(2/5/98 Open Meeting Transcript at 12-13). Likewise, in comments before the FCC in FCC Docket No. 99-68, the Commission noted that "efficient rates for inter-carrier compensation for ISP-bound traffic are unlikely to be based entirely on minute-of-use pricing structures".¹⁵

Establishing an efficient rate structure is vital to the development of local competition. Treating Internet-bound traffic as though it is local for reciprocal compensation purposes creates two significant barriers to competition. First, it encourages new entrants to the local market to focus on strategies for exploiting an opportunity for regulatory arbitrage, rather than on strategies for serving end-user customers. Second, such a structure threatens to turn end-user customers into actual *liabilities* for a competing local exchange carrier. Local exchange customers could easily cause their carriers to incur more in reciprocal compensation obligations than the

¹⁵ Commission Comments at 7.

provider can recover through customer revenues. Needless to say, such a regime discourages new entrants from entering the local market as full competitors.

Accordingly, if the Commission determines that the originating carrier should pay some inter-carrier compensation to the carrier providing access service to the ISP, the Commission should take at least four factors into account in establishing the appropriate compensation mechanism.

First, the Commission should consider that the access service that ISPs require is less costly to provide than the local exchange service provided to voice subscribers. In particular, most of the vertical features of the local switch are unnecessary for provision of access service to an ISP. Likewise, serving an ISP does not require the interoffice switching and transport necessary for routing traffic from voice subscribers.

Second, the Commission should consider that calls to the Internet experience on average far longer holding times than voice local calls. Also, call set-up cost is independent of the duration of the calls. Thus, the average per-minute cost of long-duration Internet calls are lower than short-duration local calls, because the fixed call set-up cost is spread over a larger number of minutes. Together with the first factor, this makes Allegiance's usage-sensitive costs associated with provision of access service to ISPs lower than SWBT's costs of providing local exchange service. Any compensation structure established in this proceeding should reflect that difference.

Third, as this Commission has noted, because SWBT's local regulated residential rates are non-usage-sensitive, SWBT "has no opportunity to recover costs incurred when compensating a terminating carrier."¹⁶ If the same reciprocal

¹⁶ Commission Comments at 7.

compensation structure were applied to Internet-bound traffic as applies to local traffic, SWBT could be required to pay Allegiance significantly more per month in termination fees than SWBT receives in revenue from its end-user customer. Because of this, the Commission should ensure that inter-carrier compensation does not impose an inequitable burden on SWBT (or any LEC serving end-user customers) by capping the reciprocal compensation that an end-user customer's service provider may be required to pay.

B. Points Of Interconnection

CLECs are apparently misassigning NXXs in rate centers in which they have no facilities or end-user customers. As a result, SWBT is required to transport calls over large distances, between local calling areas, while billing SWBT's originating end-users only flat rate local charges. In order to remedy this situation, SWBT has proposed that CLECs be required to provide a point of interconnection ("POI") in each SWBT exchange (or a single POI for multiple exchanges which participate in the same mandatory calling arrangement) in which a number is assigned. (A POI should be provided regardless of whether a CLEC's customer has physical facilities in the rate center or exchange, since it is the assignment of a number in a rate center that triggers the need for efficient interconnection within that exchange's rate center.)

The unique needs of ISPs (and in some cases, other, similar service providers) have given rise to special numbering arrangements that have imposed significant uncompensated costs on SWBT. SWBT's "POI" proposal is intended to address this problem and to ensure that costs are properly imposed on the appropriate carriers and customers.

ISPs seek to attract a large volume of incoming calls with long holding times, and accordingly they seek to make it convenient and cheap for their customers to call them. ISPs have therefore requested numbering arrangements in which they are assigned numbers associated with each of the local calling areas in which their customers might be located, regardless of whether the ISP—or even the CLEC—itself has facilities in all (or, indeed, perhaps any) of those areas. Once it is assigned such "virtual local numbers", the ISP can be reached by any of its customers by dialing a locally-rated, seven digit call.

Both SWBT and CLECs offer virtual local number options to ISPs and other customers with similar inbound calling needs. However, they become a matter for regulatory concern when carriers offering such arrangements are not able to pass on to other carriers the cost of carrying the virtual local call from the local calling areas in which the customer is located to a distant location far outside the originating caller's local calling area.

Where a call is both originated and delivered to the ISP by a single carrier using a virtual local number, no inefficiencies arise. The cost of transporting the call from one local calling area to another is borne by that carrier. Although the originating customer only pays local usage rates for the call, any undercompensation of the carrier can be addressed in the charges that that carrier imposes on the ISP for virtual local numbering service. In this way, the costs are ultimately and appropriately imposed on the ISP that wanted the virtual local number and the carrier that agreed to assign it. This is the case for virtually all calls that utilize FX, or any similar, SWBT provided service.

If, however, the call originates on SWBT's network, but is handed off to the ISP by a CLEC (because the ISP has chosen to purchase its inbound calling services from a CLEC), a CLEC has the ability to game the system by refusing to provide SWBT with a POI within the local calling area in which the call originates. If a local POI has not been established SWBT, must carry the call between local calling areas, even though it receives only local usage rates from the originating end-user and nothing at all from either a CLEC or the ISP. (Indeed, far from being compensated by a CLEC for the costs of transporting its call, SWBT is actually required to pay the CLEC intercarrier compensation and is being prevented by the CLEC's numbering practices from being compensated by SWBT's end-user through toll charges.) Clearly this result is unfair.¹⁷ The costs of interexchange carriage in such a situation should be borne either by the ISP or by its carrier, since they are the only parties that receive a direct benefit from the virtual local numbering arrangement.¹⁸ In a recent order, the Maine Public Utilities Commission concluded, consistent with this analysis, that the assignment by CLECs of virtual local numbers to their ISP customer unfairly imposes costs on incumbent LECs that originate calls to such numbers.¹⁹

To avoid this unfair situation and to provide CLECs with an incentive to offer efficient meet points, SWBT proposes that Allegiance should be required to establish,

¹⁷ Because SWBT offers CLECs a POI at each of its switches, no cost recovery problem exists when a virtual local call is originated by a CLEC and handed off to SWBT for termination or delivery to the ISP. In such cases, the CLEC can hand off the call to SWBT within the originating local calling area, and thus incurs no uncompensated costs. Rather, the costs of carriage beyond the local calling area are borne by SWBT and/or by its ISP customer.

¹⁸ Although CLECs may suggest that the costs should be borne in the first instance by SWBT, and passed on to its local customers, this ignores the fact that SWBT is currently precluded from increasing these nominally local usage rates.

¹⁹ Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications LLC, *Order Adopting Factual and Legal Conclusions*, Docket NO. 98-758.

upon the request of any interconnecting LEC, a POI in every SWBT exchange in which it assigns telephone numbers. Requiring Allegiance to offer POIs will ensure that Allegiance and ISPs benefiting from virtual local number arrangements will bear the costs associated with such arrangements.

A CLEC can, of course, fulfill POI requirements by establishing actual, physical interconnection points in each rate center, and by deploying new transport facilities to and from such points. However, it need not do so. POI requirements could equally well be fulfilled by negotiating alternative, mutually acceptable arrangements under which the traffic could be delivered through existing SWBT facilities. Accordingly, there is no basis for any contention that SWBT's POI proposal would require uneconomic deployment of new transport facilities by a CLEC.

C. Jurisdictional Identification of Traffic

In addition to the requirement to establish a POI in each SWBT exchange (or a single POI for multiple SWBT exchanges which participate in the same mandatory calling arrangement), SWBT submits that the Parties must identify the jurisdictional nature of traffic for compensation purposes. Calls that originate in one local calling exchange and terminate in distant calling exchange are not local in nature and should be compensated in a manner other than reciprocal compensation for local traffic.

D. Tandem versus End Office Compensation Rates

Parties should not receive the rate for tandem and transport elements of termination unless the following two conditions are satisfied:

- (1) A Party proves that its switch currently serves a geographic area comparable to that served by SWBT's tandem switch;

- (2) A Party proves that its switch performs the same functions on behalf of SWBT that SWBT's tandem switch performs.

If a CLEC satisfied both of these conditions so as to qualify for the tandem rate, the CLEC must give SWBT the option to connect directly to the CLEC's end offices and thus avoid payment of the tandem and transport rates if SWBT so chooses.

SWBT's network consists of end office switches, which connect individual subscribers to SWBT end offices, and tandem switches, which carry traffic between end offices (trunk-to-trunk connections). SWBT also has switches that serve as Class 4/5 switches, and that have both end office and tandem functionalities. The functions of tandem offices are quite different than those of end offices directly connected to subscribers. For example, tandem offices do not have to record end-user billing information or convert between analog and digital signals.

Accordingly, SWBT should pay a CLEC for tandem switching compensation if and only if (i) a CLEC provides customer location and traffic data sufficient to demonstrate that its switch currently serves a significant number of end-user customers physically located throughout a geographic area comparable to the area served by SWBT's tandem switch, (ii) a CLEC's switch performs the same functions on behalf of SWBT as those performed by SWBT's tandem switch on behalf of the CLEC (i.e. trunk to trunk switching).

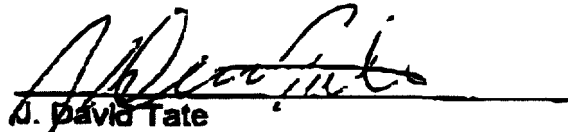
III. CONCLUSION

SWBT requests that the Commission declare that Internet-bound traffic is not subject to reciprocal compensation. Alternatively, SWBT requests that the Commission adopt meet-point-billing or bill-and-keep arrangements for Internet-bound traffic.

Alternatively, SWBT requests that to the extent the Commission determines that the originating carrier should pay some inter-carrier compensation, for internet-bound traffic the Commission should impose a cap on such payments keeping with the costing principles to be developed in SWBT's testimony and at the hearing on the merits.

Respectfully submitted,

ANN E. MEULEMAN
General Counsel-Austin



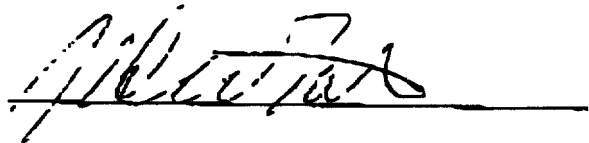
J. David Tate
Senior Counsel
State Bar No. 00791769

Thomas J. Horn
General Attorney

ATTORNEYS FOR SOUTHWESTERN
BELL TELEPHONE COMPANY
1616 Guadalupe, Room 600
Austin, Texas 78701
(512) 870-5714
(512) 870-3420 (Fax)

CERTIFICATE OF SERVICE

I, J. David Tate, Senior Counsel for Southwestern Bell Telephone Company, certify that a true and correct copy of this document was served to all parties of record on February 9, 2000, in the following manner: Via facsimile transmission, overnight or hand delivery.



Certificate of Service

I hereby certify that a copy of the foregoing Petition for Reconsideration was served via first class mail, or hand delivery and fedex where indicated on the 22nd day of February, 2000 on the following:

Michael Olsen, Deputy General Counsel
Christine Mailloux, Assistant General Counsel
NorthPoint Communications, Inc.
303 Second Street, South Tower
San Francisco, CA 94107

Thomas M. Koutsky, V.P., Fed. Regulatory Affairs
Covad Communications Company
60014th Street, NW
Suite 750
Washington, D.C. 20005

Christopher V. Goodpastor, Regional Counsel
Covad Communications Company
9600 Great Hills Trail
Suite 150 W
Austin, TX 78759

Anita C. Taff-Rice
Larry Blosser
Christy C. Kunin
Lisa N. Anderso
Blumenfeld & Cohen - Technology Law Group
1625 Massachusetts Ave., NW
Suite 300
Washington, D.C. 20036

Jeffrey Blumenfeld, CLO, General Counsel
Rhythms NetConnections, Inc.
6933 South Revere Parkway
Englewood, CO 80112

Mark C. Rosenblum
Roy E. Hoffinger
Dina Mack
295 N. Maple Avenue
Basking Ridge, NJ 07920
Attorneys for AT&T

Mark Witcher
Michelle Bourianoff
919 Congress Avenue
Suite 900
Attorneys for AT&T

James L. Casserly
James J. Velentino
Uzoma C. Onyeiji
Paula Deza
Casey Anderson
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, NW
Washington, D.C. 20004-2608
Attorneys for AT&T

John A. Redmon
David F. Wertheimer
Davis Weber & Edwards, P.C.
100 Park Avenue
New York, NY 10017
Attorneys for AT&T

Jerome L. Epstein
Nory Miller
Paul W. Cobb, Jr.
Marc A. Goldman
Jeffrey I. Ryen
Jenner & Block
601 13th Street, NW
Suite 1200
Washington, D.C. 20005

Anthony C. Epstein
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Mary L. Brown
Keith L. Seat
Henry G. Hultquist
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006

Leon M. Kestenbaum, V.P. - Federal
Regulatory Affairs
Sprint Communications Company, L.P.
401 9th Street, NW
Suite 400
Washington, D.C. 20004

Philip L. Verveer
Sue D. Blumenfield
Thomas Jones
Renee Callahan
Angie Kronenberg
David Don
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20036
Attorneys for Sprint Communications
Company, L.P.

Paul W. Garnett
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, D.C. 20007-5116
Attorney for CCTX, Inc., d/b/a Connect!

Andrew D. Lipman
Paul B. Hudson
Dana Frix
Antony R. Petrilla
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, D.C. 20007-5116

The Honorable Magalie Roman Salas
Secretary
Federal Communications Commission
the Portals
445 12th Street, SW
Washington, D.C. 20554

David J. Newburger
Newburger & Vossmeier
One Metropolitan Square
Suite 2400
St. Louis, MI 63102

Debbie Goldman
George Kohl, Senior Executive Director
Communications Workers of America
501 3rd Street, NW
Washington, D.C. 20001

Monte Anderson, President
Options Real Estate Investments, Inc.
P.O. Box 867
Desoto, TX 75123

Robert A. Surette, Mgr. RF Engineering
Shively Labs
P.O. Box 389 Harrison
Bridgton, ME 04009

Diana Natalicio, President
The Univ. of TX at El Paso
Office of the President
El Paso, TX 79968-0500

Leo R. Dunn, Staff Vice President
3M Austin Center
Corporate Services
Building A130-5N-01
6801 River Place Boulevard
Austin, TX 78726-9000

J. Robert Brown
Desert Eagle
6949 Market
El Paso, TX 79915

R. Gerard Salammé, Sr. Vice President
Nextlink
1730 Rhode Island Avenue, NW
Suite 1000
Washington, D.C. 20036

Joe Vasquez, Interim Chair
The Greater Victoria Hispanic Chamber of
Commerce
P.O. Box 2552
Victoria, TX 77902

Haywood L. Strickland, President
Texas College
2404 North Grand Avenue
P.O. Box 4500
Tyler, TX 75712-4500

Daniel B. Hastings, Jr., President
Daniel B. Hastings, Inc.
P.O. Box 673
Laredo, TX 78042-0673

Walter Steimel, Jr.
Nancy E. Boocker
Greenberg Traurig
800 Connecticut Avenue, NW
Washington, D.C. 20006

Sean Minter
IP Communications
17300 Preston Road
Suite 300
Dallas, TX 75252

Kenneth Barr, Mayor
The City of Fort Worth Texas
1000 Thorckmorton Street
Fort Worth, TX 76102

Kirk Watson, Mayor
Office of the Mayor
City of Austin Texas
P.O. Box 1088
Austin, TX 78767

Jim Thorpe, Sr. Vice President
Bank United
3200 Southwest Freeway
Suite 2000
P.O. Box 1370
Houston, TX 77251-1370

W.H. Buchholtz, Executive Director
Bexar Metro 911
Network District
107 15 Gulfdale
San Antonio, TX 78216

Micheal J. Shortley, III
Global Crossing Telecommunications, Inc.
180 South Clinton Avenue
Rochester, NY 14646
Attorney for Global Crossing Local
Services, Inc.

Ruth Milman
Michael B. Hazzard
Lawler, Metzger & Milkman, LLC
1909 K. Street, NW
Suite 820
Washington, D.C. 20006
Counsel for Z-Tel Communication, Inc.

Robert A. Curtis
Donald C. Davis
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Tampa, FL 33602

Anthony M. Black
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Norton Cutler
Vice President & General Counsel
BlueStar Communications, Inc.
401 Church Street, 24th Floor
Nashville, TN 37219

Robert J. Aamoth
Steven A. Augustino
Michael J. Francesconi
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036

Carol Ann Bischoff
Executive Vice President and General
Counsel
Terry Monroe
Vice President - State Regulatory Affairs
Competitive Telecommunications
Association
1900 M Street, NW Suite 800
Washington, DC 20036

Robin A. Casey
Eric H. Drummond
Susan C. Gentz
Casey, Gentz & Sifuentes, LLP
919 Congress Ave., Suite 1060
Austin, TX 78701
Attorney for The Association for Local
Telecommunications Services

Jonathan Askin
General Counsel
The Association for Local
Telecommunications Services
888 17th Street, NW
Washington, DC 20006

Glenn S. Richards
David S. Konczal
Fisher Wayland Cooper Leader & Zaragoza
LLP
2001 Pennsylvania Ave., NW, Suite 400
Washington, DC 20006

Brad E. Mutschleknaus
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attorneys for E.Spire Communications , Inc.

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006
Attorneys for Telecommunications Resellers
Association

Karen Nations
Senior Attorney
Metromedia Fiber Network Services, Inc.
One Meadowlands Plaza
East Rutherford, NJ 07073

Suzi Ray McClellan
Public Counsel
Rick Guzman
Assistant Public Counsel
Office of Public Utility Counsel
1701 N. Congress Avenue, 9-180
P.O. Box 12397
Austin, TX 78711-2397

Frances Marshall
Katherine E. Brown
Luin Fitch
Matthew C. Hammond
Brent E. Marshall
Anu Seam
Telecommunications Task Force Antit Trust
Division
U.S. Department of Justice
1401 H Street, N.W. Suite 8000
Washington, DC 20530

Via Hand Delivery

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 12th Street, SW
Washington, DC 20554

Janice Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C-327
445 12th Street, SW
Washington, DC 20554

Jamie Heisler
U.S. Department of Justice
Antiturst Division
Telecommunications Task Force
1401 H St. NW, Suite 8000
Washington DC 20005

ITS, Inc.
1231 - 20th Street, NW
Washington, DC 20036

Via Fedex

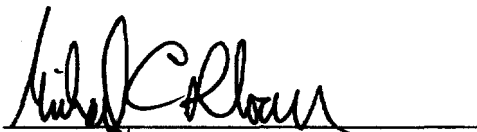
Katherine Farroba
Public Utility Commission of Texas
1701 M. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

James D. Ellis
Paul M. Mancini
Martin E. Grambow
Kelly M. Murray
175 E. Houston
San Antonio, TX 78205

Alfred G. Richter, Jr.
175 E. Houston
Room #1275
San Antonio, TX 78205

Ann E. Meuleman
1616 Guadalupe Street, Room 600
Austin, TX 78701-1298

Michael K. Kellogg
Auston C. Schlick
Kellogg, Huber, Hansen, Todd & Evans
1301 K. Street, NW, Suite 1000 West
Washington, DC 20005



Michael C. Sloan